

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEROME MERRIWEATHER,

Defendant.

Case No. 15-cr-40046-JPG-006

MEMORANDUM AND ORDER

This matter comes before the Court on defendant Jerome Merriweather's second motion for compassionate release pursuant to the First Step Act of 2018, Pub. L. No. 115-391, § 603(b)(1), 132 Stat. 5194, 5239 (2018) (codified at 18 U.S.C. § 3582(c)(1)(A)) (Doc. 383). The Court denied Merriweather's prior motion (Doc. 329).

A new motion requires new exhaustion. Before moving for compassionate release in a United States District Court, a defendant must either (1) "fully exhaust[] all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf," or (2) wait "30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." In his new motion, Merriweather does not allege that he followed either route to exhaustion.

In September 2023, the Court gave Merriweather an opportunity to supplement his motion within 30 days with evidence of exhaustion. It further warned him that if he failed to respond, the Court would offer the Government a chance to assert exhaustion as an affirmative defense before moving forward with the merits of Merriweather's motion. Merriweather did not respond to the Court's order.

Accordingly, the Government shall have up to and including March 15, 2024, to file a

motion to dismiss based on the failure to exhaust. The motion should solely address the exhaustion issue. If the Government does not file a motion by that date, the Court will construe that as an indication that the Government is waiving the failure to exhaust as a defense and will set a deadline for a response on the merits.

IT IS SO ORDERED.

DATED: February 20, 2024

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE